

1951

State Transport-II
File No. 51(R)

Legal Department

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BRANCH



Subject:— Rules under the
Bombay State Road Transport
Act, 1950

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File No. State Transport II/51(R)

Gen. 194 e.

695-B

Office of the R.L.A.

Revised draft rules are sent herewith.

2. Rule 2 of H.D. draft (revised rule 2).-- Clauses (d), (f) and (g) are unnecessary and have been deleted from the revised draft. Clause (c) has also been deleted (vide para 13 post). Clause (h) also has been deleted as the expression "State Transport" does not occur anywhere in ~~the~~ ^{Rules} ~~the~~. The question regarding ~~the~~ the use of the word "nationalisation" does not therefore survive.

3. Rule 3 of H.D. draft (revised rule 3).-- Secretary, Home Department, in his note on p.103 ante has observed that it is possible to give the exact constitution in rule 3. The rule can be drafted on the same lines as the corresponding rule in the existing notification. The proposal cannot be covered by the provisions of section 5 and section 44 of the Road Transport Corporation Act, 1950. Since the rule suggested by Shri Sathe on p. 113 ante provides for the appointment of ex-officio and non-official members, the rule may be supported by the provisions of section 44(2)(a) of the Act, which provides for the manner of appointment of members of the Corporation. Sub-rule (2) of the revised draft provides for the proportion of representation in the Corporation of the Central and State Government. The Home Department is requested to verify if the draft rule is suitable and carries out its intention.

4. Rule 4 of H.D. draft (revised rule 4).-- Section 6 of the Act lays down the disqualifications for being chosen as, or for being a member of the Cor-

poration. Section 8 also lays down the circumstances in which the State Government can remove from office the Chairman or any other member of the Corporation. The proviso to the draft rule 4 empowers the State Government to disqualify any member from continuing as a member if he has failed or is unable to carry out his duties. It would not be legally feasible to confer such additional power for disqualification on the State Government by means of a rule under section 44. The proviso has therefore been deleted.

5. Rule 4A proposed by H.T.C. on nos. 115 to 119. - The new rule 4A provides for the constitution of a standing committee. The object of such a committee is to enable the Corporation to delegate its power to such committee as it is stated that a Corporation-Board consisting of as many as nine members cannot function as executive body for the day to day administration. Such a standing committee however cannot be constituted under the rule making section 44 of the Act. Section 12(a) of the Act ~~now~~ empowers the Corporation to appoint committees of its members by resolution passed at a meeting for performing such functions as may be specified in the resolution. The committee would be deriving its authority under a resolution. No other method would be competent for constituting such a committee. The proposed rule 4A is therefore not in order and has not been included in the revised draft rules.

6. Rule 5 of H.D. (revised rule 5). - The Motor Transport Controller is to be the ex-officio Vice-Chairman under the proposed revised rule 3. Rule 5(b) of the

Home Department draft provides that official members shall not be eligible for the allowance provided in rule 5(a). Secretary, Home Department also has stated (p.103 ante) that it is not necessary to give a larger allowance to the Vice-Chairman for attending the meetings. Special provision for allowance to the Vice-Chairman has therefore been deleted. Clause (c) of H.D. draft provides that the emoluments of the whole-time members shall be fixed by Government in each case. Under section 44(2)(b), the remuneration to be paid to members must be fixed in the rules itself. It is, therefore, necessary to prescribe the emoluments in the rules themselves. Clause (c) of H.D. draft rule 5 has therefore been deleted from the revised draft rule 5.

7. Rule 9 of H.D. draft.- Section 14(3)(a) provides that the scales of pay of the Chief Executive Officer, General Manager and the Chief Accounts Officer shall be such as may be prescribed. It is therefore necessary to prescribe the scales under the rules themselves rather than permitting them to be determined by the State Government by executive orders. Rule 9 of the Home Department draft has therefore been omitted.

8. Rule 10 of H.D. draft.- Under section 7, any member of a Corporation may resign his office by giving notice in writing to the State Government and, on such resignation being accepted by that Government he shall be deemed to have vacated his office. It is not therefore legally permissible to require a three months' notice from a member. Consequently, rule 10 of the Home Department draft has been deleted from the revised draft.

9. Rule 13 of H.D. draft.- ~~Under~~ Section 17, ~~may~~ empowers the State Government to constitute, by notification, one or more advisory councils consisting of such number of persons, on such terms and for the purposes of advising the corporation in such matters, as may be specified in that notification. The provision regarding advisory Councils may therefore be made under a notification rather than under a rule under section 44 of the Act. The rule has therefore been deleted from the revised draft.

10. Rule 14 of the H.D. draft.- Under section 23, the obligation on the part of Government to provide capital to the Corporation is optional. Under the proposed sub-rule (1) of rule 14, the contribution by the Central and State Governments is made compulsory. This provision is, therefore, inconsistent with section 23. Moreover, the proposed provision is not necessary in view of the provisions of section 23(1).

The proportions of contribution by the Central and State Governments is to be agreed to by both the Governments. It is true that the Centre has agreed to contribute 33 1/3 per cent of the capital; but it would not be legally in order to provide that the State Government shall contribute 66 2/3 per cent and the Central Government shall contribute 33 1/3 per cent in terms of sub-rule (2) of rule 14.

Sub-rule (3) of rule 14 repeats the provisions of section 26 of the Act and is therefore redundant.

Rule 14 of the H.D. draft at p.13 ante has, therefore, been ~~was~~ omitted from the revised draft.

11. Rule 15 of the H.D. draft (revised rule 10).- All that appears necessary under section 27 is to provide for the constitution....

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constitution of the fund and for the deposit of moneys belonging to such fund in banks other than the Reserve Bank of India and its agents. Rule 10 of the revised draft provides accordingly. With regard to the proposed sub-rule (3) of rule 15 suggested by the M.T.C. on p.131 ante or p.163 ante, it is pointed out that the Imperial Bank of India is the agent of Reserve Bank of India (Vide Schedule III to the Reserve Bank of India Act, 1934) and as such is already covered by the provisions of section 27(2). Reference to the Imperial Bank of India has therefore been deleted from the revised draft rule 10(2).

12. Rule 16 of H.D. draft (revised rule 11).— (1) It is proposed under the draft rule to constitute funds -

(1) for construction and equipment of bus stations, bus stands and such other constructions inherently essential for the purposes of the transport undertaking; and

(2) for the construction of quarters for State Transport employees

by contributing certain percentage of gross receipts on revenue accounts. These provisions of the rule in so far as they direct that certain percentages from the gross receipts on revenue accounts should be contributed are inconsistent with the provisions of section 30 of the Act which, in specific terms, provide that a corporation may utilise such percentage of its net annual profits as may be specified in this behalf by the State Government for the provision of amenities to the passengers using the road transport services and welfare of labour employed by the corporation etc. It is, however, seen from page 166 of the M.T.C.'s letter that there is a proposal to build up an insurance fund to cover risk or any possible loss or damage of the corporation to property other than the vehicles. The proposal regarding building up of an insurance fund in respect of motor vehicles is covered by section 41 of the Act. The other proposal

however in respect of other property may be covered by the provision of section 29 of the Act and the fund for that purpose may be created under the rules. The necessary provision has been made in the rule 11 of the revised draft.

(2) Draft rule 16(v) of H.D. draft.— This sub-rule (v) is ultra vires of section 28 of the Act which empowers the State Government alone to determine at what rate the interest on the capital provided by the Central as well as by State Governments is to be paid. This power of determining the rate cannot be delegated to the Corporation.

13. Rule 17 of H.D. draft.— Under section 30, Government is empowered to prescribe other purposes only for which any specified percentage of its net profits can be utilised.

The first part of rule 17 of the H.D. draft which provides for utilising 50 per cent of the net profits for the provision of amenities to the passengers and welfare of employees of the Corporation is, therefore, not in order. How much percentage of the net profits can be utilized for the amenities of passengers etc. can be laid down by an order of the State Government.

With reference to the P.M.T.'s remarks on this rule on page 135 ante, it is pointed out that after the percentage of net annual profits of the Corporation are fixed by Government for the provision of amenities to passengers etc., section 30 provides that the balance shall be made over to the State Government for the purposes of road development. It is not necessary to provide as to how this balance received by Government from the Corporation should be credited. Rule 17 and rule 2(c) of the H.D. draft have therefore been omitted.

14. Rule 29 of H.D. draft.— Rule 29 is redundant as pointed out by the P.M.T.C. on p. 137 ante and has therefore been

omitted from the revised draft.

15. Rule 30 of H.D. draft.- This rule provides that monies collected by the Corporation shall not be utilised to make any payments unless authorised by the Corporation. This rule is relatable to section 12(c) of the Act and it is for the Corporation by means of a resolution to authorise the Chief Executive Officer or General Manager to exercise such power and perform such duties, as it may deem necessary for efficient day to day administration of its business. The said provision cannot, therefore, be made under the rule making section. It has therefore been deleted from the revised draft.

16. Rules 43 to 73.- In view of Secretary, Home Department's marginal remarks at p. 143 ante against Shri Sathe's note regarding the necessity of the said rules, these rules have been deleted from the revised draft (vide also F.D. note on p. 157).

17. Rules 74 and 76.- These rules as stated by Secretary, Home Department, at p. 107 ante, are not necessary and have been omitted.

18. Schedules.- H.D. will no doubt check up the Schedules in the light of the above remarks.

Id/- J.R.D. 11/9

Remembrancer of Legal Affairs.

U.R. to H.D. No.14520, dated the 12th September 1951.